

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

9/18/00

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Opposition No. 108,834

The Sports Authority  
Michigan, Inc., by merger  
with Intelligent Sports  
Inc.,<sup>1</sup> and The Sports  
Authority, Inc.

v.

Hanover Catalog Holdings,  
Inc. and Hanover Direct,  
Inc., joined as a party  
defendant

Before Cissel, Hohein and Rogers, Administrative Trademark  
Judges.

By the Board.

Hanover Catalog Holdings, Inc. has filed an application  
for registration of the mark AMERICA'S AUTHORITY IN HOME  
FASHIONS (in typed form) for the following services in  
International Class 42:

Mail order services featuring goods in the field  
of housewares and home textiles, namely, sheets,  
pillow cases, pillow shams, toss pillows, dust

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<sup>1</sup> The records of the Assignment Branch of the U.S. Patent and  
Trademark Office reflect a merger of Intelligent Sports Inc. into  
The Sports Authority Michigan, Inc. See Reel No. 1699, Frame  
0957. See also the Certificate of Merger/Consolidation filed  
with the declaration of Michael Lisi on March 19, 1999 as part of  
opposers' response to the summary judgment motion (filed January  
29, 1999). Accordingly, the caption of this opposition has been  
changed to reflect the merger. See TBMP §512.02.

ruffles, comforters, duvet covers, blankets, curtains, draperies, pillows, lamps, mirrors, wall hangings, wallpaper, drapery hardware, window shades, shutters and blinds, rugs, furniture, furniture covers, towels, dishes, tableware, flatware, tablecloths, glassware.<sup>2</sup>

The application has since been assigned to Hanover Direct, Inc.<sup>3</sup> We refer to Hanover Catalog Holdings, Inc. and Hanover Direct, Inc. collectively as "applicants."

Intelligent Sports Inc. and The Sports Authority, Inc. have opposed registration of applicants' mark, alleging as follows:

[Applicants' mark] is likely to cause confusion, or to cause mistake or to deceive with respect to (1) Opposers' prior adoption and use of a trade name and service mark dominated by the word "AUTHORITY" - to wit - THE SPORTS AUTHORITY . . . (2) Opposers' prior adoption and use of a family of marks formed or dominated by the word "AUTHORITY" . . . and (3) Opposers' numerous U.S. Trademark Registrations for a family of marks formed or dominated by "AUTHORITY," including, without limitation, . . . 32 registrations . . . .

The following are some of the marks asserted by opposers:

1. AUTHORITY (Registration No. 1,245,417) for "apparel, namely, rainwear, jackets, coats, suits, slacks and vests";<sup>4</sup>

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<sup>2</sup> Application Serial No. 75/208,182 was filed on November 21, 1996 and claims first use anywhere and first use in commerce on October 7, 1996.

<sup>3</sup> The assignment of the application to Hanover Direct, Inc. has been recorded with the Assignment Branch of the U.S. Patent and Trademark Office at Reel No. 1856, Frame No. 0583.

<sup>4</sup> Registration No. 1,245,417 issued on July 12, 1983 and claims first use and first use in commerce on May 11, 1982.

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2. THE SPORTS AUTHORITY (Registration No. 1,527,526) for "retail store services featuring sporting equipment and clothing";<sup>5</sup>
3. THE SKI AUTHORITY (Registration No. 1,688,221) for "retail store services featuring ski equipment and clothing";<sup>6</sup>
4. THE KNIFE AUTHORITY (Registration No. 1,688,221) for "retail store services featuring sporting goods and equipment, footwear and clothing";<sup>7</sup>
5. THE LOW PRICE AUTHORITY (Registration No. 1,937,000) for "retail store services comprising the sale of sporting goods and equipment, footwear and clothing";<sup>8</sup>
6. AUTHORITY (Registration No. 2,074,354) for "retail store services in the field of sporting goods and equipment, apparel, footwear, headgear and related goods and services";<sup>9</sup> and
7. THE AUTHORITY ON SPORTING GOODS (Registration No. 2,101,178) for "rental of sporting goods, including protective clothing and equipment;" and "retail store services in the fields of fitness, sporting goods and equipment, apparel, footwear, headgear and related goods."<sup>10</sup>

In their answer, applicants have denied the salient allegations of the notice of opposition.

This case now comes up on applicants' motion for summary judgment (filed January 29, 1999). There,

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<sup>5</sup> Registration No. 1,527,526 issued on February 28, 1989 and claims a date of first use on June 29, 1987 and a date of first use in commerce on May 19, 1988.

<sup>6</sup> Registration No. 1,688,221 issued on May 19, 1992 and claims first use and first use in commerce in September, 1989.

<sup>7</sup> Registration No. 1,963,911 issued on March 26, 1996 and claims first use and first use in commerce on September 30, 1992.

<sup>8</sup> Registration No. 1,937,000 issued on November 21, 1995 and claims first use and first use in commerce in January, 1992.

<sup>9</sup> Registration No. 2,074,354 issued on June 24, 1997 and claims first use and first use in commerce in December, 1987.

<sup>10</sup> Registration No. 2,101,178 issued on September 30, 1997 and claims first use and first use in commerce in December, 1995.

applicants contend that "the sheer differences in the overall commercial impressions of the marks themselves is dispositive to a finding that a likelihood of confusion does not exist between Hanover's AMERICA'S AUTHORITY IN HOME FASHIONS mark and every one of TSA's [opposers'] AUTHORITY marks." Specifically, applicants maintain that "the marks should be evaluated by comparing the overall impression created by each mark taken as a whole, rather than by breaking the marks up into their component parts for comparison"; that AUTHORITY is the only word common to applicants' mark and opposers' marks; that AUTHORITY is not the first word in any of the marks; that HOME FASHIONS is the dominant term in applicants' mark; that because AUTHORITY is "sandwiched" between the first term and the dominant term in applicants' mark, AUTHORITY does not carry sufficient weight to render applicants' mark confusingly similar to opposers' marks; and that the commercial impression of applicants' mark is "markedly different" from the commercial impression of any of opposers' marks. Further, applicants maintain that "[t]he differences in Hanover's and TSA's [opposers'] respective goods and services and the channels of trade as well as the extensive registration of third party AUTHORITY marks supplement and reinforce this conclusion [of no likelihood of confusion]."

In response to applicants' motion for summary judgment, opposers contend that "prior to Applicant's application, [opposers established] a Family of AUTHORITY marks, with the members of the family all having the AUTHORITY surname"; "that opposers' Family of AUTHORITY marks have [sic] been extensively advertised and promoted since their adoption"; that opposers' "Family of AUTHORITY Marks are [sic] not only 'strong,' but they are famous, and thus entitled to far-reaching protection against third-party uses beyond mere identical uses"; that "Applicant has focused on the incorrect portions of the AMERICA'S AUTHORITY IN HOME FASHIONS mark to avoid a finding of similarity"; that "[i]n comparing a 'family of marks' to those of a junior user's mark, the use of a surname is an important consideration for weighing this factor"; and that "in comparing the marks under a 'family of marks' analysis, the main focus . . . should be on the dominant, or non-descriptive portions of the mark." Opposers also contend that the AUTHORITY portion of the mark is the dominant portion, noting that applicants have disclaimed "America's" and "home fashions." Further, opposers argue that the parties offer overlapping goods and services; that "[b]oth parties offer their goods and services through identical marketing channels, including the Internet, mail order services, direct mail advertising and other printed material"; that because opposers use and

license their marks "on a wide variety of goods and services, some of which are not at all related to sporting goods, consumers are likely to believe that [opposers are] connected to Applicant's operation in some way, if not directly, by authorizing or sponsoring Applicant's activities"; and that many of the registrations for AUTHORITY marks listed by applicants are owned by opposers or have been "challenged" by opposers and the registrations do not prove actual use of the marks.

In turn, applicants filed a reply brief on April 19, 1999. We have not considered applicants' reply brief, however, because it exceeds the page limit allowed for reply briefs under Trademark Rule 2.127(a).<sup>11</sup>

We begin our discussion by noting that summary judgment is an appropriate method of disposing of cases in which there are no genuine issues of material fact in dispute, thus leaving the case to be resolved as a matter of law. *Societe Des Produits Marnier Lapostolle v. Distillerie Moccia S.R.L.*, 10 USPQ2d 1241, 1244 (TTAB 1989); and Fed. R. Civ. P. 56(c). The purpose of summary judgment is to avoid an unnecessary trial where additional evidence would not reasonably be expected to change the outcome. *Pure Gold, Inc. v. Syntex (U.S.A.), Inc.* 739 F.2d 624, 222 USPQ 741

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<sup>11</sup> The consented motion (filed April 9, 1999) to extend the time for filing a reply brief is therefore denied as moot.

(Fed. Cir. 1984). A party moving for summary judgment has the burden of demonstrating the absence of any genuine issue of material fact, and that it is entitled to summary judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 (1986). The evidence must be viewed in a light favorable to the non-movant, and all justifiable inferences are to be drawn in the non-movant's favor. *Opryland USA, Inc. v. Great American Music Show, Inc.*, 961 F.2d 200, 22 USPQ2d 1542 (Fed. Cir. 1992).

In determining whether there is any genuine issue of material fact relating to the ultimate legal question of likelihood of confusion, we must consider those of the 13 evidentiary factors listed in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (CCPA 1973), for which evidence is of record and which are pertinent to the case in question. See *Nina Ricci S.A.R.L. v. E.T.F. Enterprises Inc.*, 889 F.2d 1070, 12 USPQ2d 1901 (Fed. Cir. 1989). As noted in the *du Pont* decision itself, each of the factors may from case to case play a dominant role.

The first factor that we consider is "the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression." No element, even disclaimed elements, of the involved marks

may be ignored. See *In re National Data Corp.*, 753 F.2d 1056, 1060, 224 USPQ 749, 752 (Fed. Cir. 1985).<sup>12</sup>

Turning first to opposers' THE CLUB AUTHORITY and PARTS AUTHORITY marks, we find that they are so markedly different from applicants' mark AMERICA'S AUTHORITY IN HOME FASHIONS in appearance, sound, connotation and commercial impression that there is no likelihood of confusion between applicants' mark and such marks.

Next, turning to the remaining marks pleaded by opposers, we note that AUTHORITY is the only term common to opposers' marks and applicants' mark and that such marks of opposers comprise the word AUTHORITY alone or in combination with one or more sporting, apparel or footwear terms. In contrast, applicants' mark begins with the possessive form of a geographic term and terminates with HOME FASHIONS. Opposers' pleaded marks do not contain geographic terms and do not include any terms in the possessive form.<sup>13</sup> Also, HOME FASHIONS is a term that does not appear in any of opposers' pleaded marks, and is not a sporting, apparel or

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<sup>12</sup> The consuming public is unaware of what words have been disclaimed during prosecution of the trademark application at the U.S. Patent and Trademark Office. *Id.*

<sup>13</sup> We recognize that opposers have filed a declaration by Michael Lisi, the senior vice president, general counsel and secretary for The Sports Authority Michigan, Inc., in which he states that opposers own and use common law marks such as AMERICA'S AUTHORITY ON OUTDOOR SPORTS. However, many of such marks, including AMERICA'S AUTHORITY ON OUTDOOR SPORTS, have not been pleaded in the notice of opposition. Because opposers may not seek to avoid applicant's motion by relying on unpleaded marks, we have not considered such marks.



footwear term. Thus, to the extent that opposers' marks identify an "authority," the "authority" is in a field completely unrelated to that of applicants. Further, HOME FASHIONS, i.e., terms which modify AUTHORITY in applicants' mark, are positioned after AUTHORITY, while in all but one of opposers' pleaded marks, the term which modifies AUTHORITY, e.g., SPORTS or SKI, is positioned before AUTHORITY.<sup>14</sup> The differences in the locations of these terms which modify AUTHORITY in the respective marks assist in differentiating the commercial impressions of the marks. In view of foregoing, when considering opposers' pleaded marks and applicants' mark in their entireties, we believe that they differ so substantially in appearance, sound, connotation and commercial impression that there is no likelihood that applicants' use of its mark will result in confusion.

We would hold for applicants on the question of likelihood of confusion even if we were to find that one or more of opposers' pleaded marks is famous as applied to their goods and services; that opposers have a family of marks; that opposers have a family of marks which "have become very strong and famous"; that opposers' goods and services are closely related to the services identified in

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<sup>14</sup> The exception is Registration No. 2,101,178 for THE AUTHORITY ON SPORTING GOODS.

applicants' application; that the parties' goods and services move through the same channels of trade to the same classes of purchasers; and that the goods and services are purchased casually rather than with care. Simply put, opposers, in responding to the motion for summary judgment, have not set out any evidence that they could produce at trial which could reasonably be expected to cause us to come to a different conclusion. The first *du Pont* factor simply outweighs all of the others that might be pertinent to this case. See *Kellog Co. v. Pack'em Enterprises Inc.*, 951 F.2d 330, 21 USPQ2d 1142 (Fed. Cir. 1991) (affirming entry of judgment when a single *du Pont* factor, i.e., the dissimilarity of the marks, was dispositive of the likelihood of confusion issue).

Accordingly, after carefully considering all of the parties' arguments and submissions, viewing the evidence in a light favorable to opposers, and drawing all justifiable inferences in favor of opposers, we believe that there is no genuine issue as to any fact that would be material to our decision on opposers' claim of likelihood of confusion, and that applicant is entitled to judgment on this question as a matter of law. Applicants' motion for summary judgment on

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the opposition is, therefore, granted and the opposition is hereby dismissed.

R. F. Cissel

G. D. Hohein

G. F. Rogers  
Administrative Trademark  
Judges, Trademark Trial  
and Appeal Board